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E-Filed on October 5, 2006

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**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
  
Debtor.

Case Nos.:  
BK-S-06-10725-LBR  
BK-S-06-10726-LBR  
BK-S-06-10727-LBR  
BK-S-06-10728-LBR  
BK-S-06-10729-LBR

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
  
Debtor.

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED  
FUND, LLC,  
  
Debtor.

JOINTLY ADMINISTERED  
Chapter 11 Cases

Judge Linda B. Riegle Presiding

In re:  
USA CAPITAL FIRST TRUST DEED FUND,  
LLC,  
  
Debtor.

**NOTICE OF ENTRY OF MODIFIED  
ORDER AUTHORIZING INTERIM  
DISTRIBUTIONS AND HOLDBACKS**

In re:  
USA SECURITIES, LLC,  
  
Debtor.


Affects:  
☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☒ USA Capital Diversified Trust Deed Fund, LLC  
☒ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

**PLEASE TAKE NOTICE** that on the 2nd day of October 2006, the Court entered  
its Modified Order Authorizing Interim Distributions and Holdbacks, copy attached.

**LEWIS**  
AND  
**ROCA**  
LLP  
LAWYERS

Dated October 5, 2006.

**LEWIS AND ROCA LLP**

By  /s/ RC (#006593)

Susan M. Freeman, AZ 4199 (pro hac vice)

Rob Charles, NV 6593

*Attorneys for Official Unsecured Creditors' Committee  
for USA Commercial Mortgage Company*

**EXHIBIT A**



Entered on Docket  
October 02, 2006

A handwritten signature in dark ink, appearing to read "Linda B. Riegler".

Hon. Linda B. Riegler  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

**In re:**

**USA Commercial Mortgage Company  
06-10725 – Lead Case**

**USA Capital Realty Advisors, LLC  
06-10726**

**USA Capital Diversified Trust Deed Fund,  
LLC  
06-10728**

**USA Capital First Trust Deed Fund, LLC  
06-10728**

**USA Securities, LLC  
06-10729**

**Debtors.**

**Jointly Administered**

**Chapter 11 Cases**

**Judge Linda B. Riegler Presiding**

**Modified Order Authorizing Interim  
Distributions and Holdbacks**

**Date:** September 13, 2006

**Time:** 9:30 a.m.

**Affecting:**

☐ All Cases

**or Only:**

☒ USA Commercial Mortgage Company

☐ USA Capital Realty Advisors, LLC

☒ USA Capital Diversified Trust Deed Fund,  
LLC

☒ USA Capital First Trust Deed Fund, LLC

☐ USA Securities, LLC

This Court filed its Order (A) Granting (i) Debtors' Motion to Distribute Funds; (ii) Debtors' Hold Funds Motion and (iii) the Compel Motion, and (B) Denying (i) the Lift Stay Motion and (ii) McKnight Motion on August 24, 2006 (DE 1184). Certain issues were continued for hearing on August 31, 2006. Debtor filed its Modified Motion To Distribute Funds And Proposed Procedures For Ongoing Distributions on August 29, 2006 (DE 1203). The matter was continued to a hearing on September 13, 2006 and heard in



1 connection with the Motion to Amend Debtor's Protocol For Continuing Distributions and  
2 Interim Holdbacks filed on September 1, 2006 (DE 1233) by the Official Committee of  
3 Unsecured Creditors of USA Commercial Mortgage Company. For the reasons explained  
4 in the filings before this Court, good cause appearing,

5 IT IS ORDERED THAT to the extent applicable, USA Commercial Mortgage  
6 Company ("USACM") is authorized to make interim distributions on a monthly basis  
7 ("Monthly Interim Distribution") to each of USA Capital Diversified Trust Deed Fund,  
8 LLC (the "Diversified Fund"), USA Capital First Trust Deed Fund, LLC (the "FTD Fund")  
9 and, together with Diversified Fund, the "Funds") and each of the other Direct Lenders  
10 (collectively, "Lenders" and each a "Lender") as set forth below:

11 1. Monthly Interim Distributions to the Lenders (including the Funds) in any  
12 given month shall be made from the post-petition collections deposited in the Collection  
13 Account that relate to such Lenders' subject Loans for the period through the end of the  
14 prior month (the "Subject Month") as calculated by USACM less the amounts set forth  
15 below:

16 1.1. Fees actually collected from the borrower that consist of:

17 (A) USACM's servicing fees (*i.e.*, the 1% servicing fee that the  
18 Debtors requested in the Distribution Motion which shall be transferred to USACM's  
19 operating account) and

20 (B) all other fees and costs that properly can be charged and collected  
21 pursuant to the applicable Loan Servicing Agreement(s) ("LSA") (which shall be  
22 transferred to USACM's operating account) (collectively the "Fee Reduction").

23 Costs of collection charged to and obtained from a borrower in  
24 accordance with the underlying loan documentation will be retained by the Debtors and  
25 shall not reduce the distribution of principal and interest, less the sums collected pursuant  
26 to sections 1.1 and 1.2 of this Order, to the applicable Lender.



1.2. an additional 2% of principal on all payments of Loans collected (calculated on a per annum basis and on the same basis as servicing fees are charged and collected under the LSA's) during the Subject Month (the "2% Holdback"), pending Debtors' review of the LSA's to determine whether 1% or up to 3% is authorized to be charged under the applicable LSA, and pending any subsequent and further Court order(s).

1.3. the costs of the Hilco appraisals allocated evenly among the projects appraised with such costs to be deducted from the principal collected on a loan by loan basis (the "Hilco Holdback"), and

1.4. any remaining amounts that each Lender received pre-petition from USA on non-performing loans (the "Offsets"), as reflected by the sum of the amounts to be remitted by USA {due from the Lender} as shown on the Direct Lender Statements prepared for each Lender by account number for the month in question.<sup>1</sup>

2. Not later than the 25th day of the month after a month's end (except that for July 2006 and August 2006 collections, the scheduled distribution date of the Schedule (defined below) shall be not later than September 29, 2006),

2.1. Debtors shall distribute to a designated representative for each of the four Official Committees appointed in these cases (collectively, the "Reviewing Parties") a schedule (the "Schedule") that contains the following information:

2.1.1. the post-petition collections deposited in the Collection Account during the Subject Month, separately identifying, to the extent reasonably practicable to do so, the principal, interest, fees and Collection Costs (as defined below) paid,

2.1.2. the identity and corresponding payoff amount of the Loans that were fully paid off post-petition during the Subject Month,

<sup>1</sup> For example, if a particular Lender invested in five different loans under a single vesting name, the amounts (which may be positive or negative) shown on Line 12 of each of the five Lender Statements for that vesting name will be netted together and the resulting amount, if positive, will be available for distribution to the Lender.



1 2.1.3. the amount of the 2% Holdback,

2 2.1.4. the amount of the Hilco Holdback, and

3 2.1.5. the amount of the net Offsets to be held back by USACM.

4 2.2. Each Reviewing Party shall have seven (7) business days to review  
5 the Schedule (the "Objection Deadline"). If none of the Reviewing Parties object as  
6 provided in paragraph 2.2.1 below, USACM shall proceed in making the Monthly Interim  
7 Distribution as set forth herein.

8 2.2.1. In the event a Reviewing Party determines that the Monthly  
9 Interim Distribution and/or Schedule is inappropriate or inaccurate, or that the numbers or  
10 calculations are incorrect, such Reviewing Party, on or before the Objection Deadline,  
11 shall send a writing to the Debtors and the other Reviewing Parties setting forth the precise  
12 nature of the objection and the amount at issue (the "Objection"). Thereafter, the  
13 objecting party and the Debtors shall meet and confer in an attempt to reach an agreement  
14 regarding the Objection. If an agreement cannot be reached or if no meeting or conference  
15 takes place within five (5) business days of the Objection Deadline, any Reviewing Party  
16 may file a motion with the Court to have the dispute heard at the next omnibus hearing  
17 date that is at least ten (10) business days after the date such motion is filed.<sup>2</sup> In addition,  
18 if an agreement is reached regarding an Objection, the parties to the Objection shall submit  
19 an explanation of the resolution to the other Reviewing Parties.

20 3. Debtors' professionals will determine the types of professional services  
21 rendered and expenses incurred in collecting specific Loans that, in USACM's business  
22 judgment, are chargeable against a Borrower under the applicable provisions of the LSA's,  
23 and then Debtors' professionals will review their time and expense records with respect to  
24 each Loan at issue to identify time spent and expense incurred in collecting specific Loans

25  
26 <sup>2</sup> The Debtors and Reviewing Parties, hereby, consent to Objections being heard on shortened  
time provided that any such hearing is held at least ten (10) business days after the filing of the  
motion.



1 that, in USACM's business judgment, is chargeable against the Borrower under the  
2 applicable Loan documents, or allocable on a Loan-by-Loan basis pursuant to applicable  
3 provisions of the LSA's, including time spent and expense incurred in collecting more  
4 than one Loan of a particular borrower or Loans related to more than one borrower which  
5 might be allocable to specific Loans in USACM's business judgment, along with other  
6 direct collection costs allocable to specific Loans (collectively, the "Collection Costs").  
7 USACM will exercise its reasonable business judgment to attempt to collect the Collection  
8 Costs from borrowers. For avoidance of doubt, nothing in this Order shall affect the  
9 allowance as administrative expenses under the Bankruptcy Code of the fees and costs of  
10 Debtors' professionals that are determined to be Collection Costs as defined herein.

11 3.1. To implement the foregoing provisions of this paragraph 3  
12 respecting recovery of Collection Costs, USACM shall proceed as follows:

13 3.1.1. USACM shall include the Collection Costs relating to the  
14 relevant Loan in the loan payoff figures it provides from time to time to borrowers;

15 3.1.2. To the extent Collection Costs are collected from borrowers,  
16 such Collection Costs shall be transferred to USACM's operating account pursuant to  
17 paragraph 1.1 of this Order;

18 3.1.3. To the extent Collection Costs are not collected from  
19 borrowers on Loans that are repaid in full during a Subject Month, such Collection Costs  
20 shall be withheld from amounts otherwise distributable to Lenders on the Loans at issue  
21 and shall be held in USACM's collection account pending a determination by the Court as  
22 to whether the Collection Costs are chargeable to the Lenders on those Loans.

23 4. All amounts held back by USACM pursuant to this Order shall be held and  
24 segregated in the Collection Account unless otherwise provided herein, with the rights and  
25 legal positions of all parties, including the Debtors or any Lender, reserved in such funds  
26





1 and shall not be further disbursed absent an applicable order of the Court. Such funds held  
2 and segregated in the Collection Account shall be deemed to be not commingled.

3 5. Upon the FTD Fund receiving its share of the Monthly Interim Distribution,  
4 the FTD Fund is hereby authorized, after establishing a reserve that the FTD Fund and the  
5 FTD Fund Committee deem to be sufficient to pay all accrued administrative expenses  
6 through the end of the Subject Month and all scheduled or asserted unsecured claims  
7 (excluding any filed proofs of claim that are asserting amounts for equity interests or on  
8 behalf of investments by direct lenders in individual loans and deeds of trust), to distribute  
9 remaining available funds to Fund Members of the FTD Fund (the "Monthly FTDF  
10 Distribution"), in accordance with the terms of the Second Amended and Restated  
11 Operating Agreement of the FTD Fund; provided, however, that any such distribution is  
12 without prejudice to the right of any party in interest to claim and assert an interest in such  
13 distributed funds.

14 6. Upon the Diversified Fund receiving its share of the Monthly Interim  
15 Distribution, the Diversified Fund is hereby authorized, after establishing a reserve that the  
16 Diversified Fund and the Diversified Fund Committee deem to be sufficient to pay all  
17 accrued administrative expenses through the end of the Subject Month and all scheduled  
18 or asserted unsecured claims (excluding any filed proofs of claim that are asserting  
19 amounts for equity interests or on behalf of investments by direct lenders in individual  
20 loans and deeds of trust), to distribute remaining available funds to Fund Members of the  
21 Diversified Fund (the "Monthly Diversified Fund Distribution"), in accordance with the  
22 terms of the Second Amended and Restated Operating Agreement of the Diversified Fund;  
23 provided, however, that any such distribution is without prejudice to the right of any party  
24 in interest to claim and assert an interest in such distributed funds.

25 7. The Monthly Interim Distribution, the Monthly FTDF Distribution and the  
26 Monthly Diversified Fund Distribution are made without waiving the rights or claims of



1 any party in interest, including the rights or claims of any Debtor, creditor or Lender in  
 2 connection with (i) USACM's calculation of the amounts distributed, (ii) USACM's right  
 3 to collect servicing fees and other fees provided under the LSA's and other applicable  
 4 agreements and court orders, (iii) USACM's right to net all amounts that may be owed to  
 5 and from a Lender, (iv) the right or claims discussed in the limited opposition filed by the  
 6 Diversified Fund Committee (Docket 987); and (v) all other rights and arguments,  
 7 specifically including, without limiting the foregoing, any rights USACM may have to file  
 8 a motion with the Court requesting additional holdbacks for foreclosure or other collection  
 9 costs under the LSA's, and to recover from any Lender to the extent the Lender receives a  
 10 distribution under any Monthly Interim Distribution that is ultimately determined to be  
 11 greater than such Lender had a right to receive, and the right of any Lender to recover any  
 12 amounts from any Offsets which are finally determined to be improper, incorrect or  
 13 contrary to applicable law.

14 8. The Monthly Interim Distribution, the Monthly FTDF Distribution and the  
 15 Monthly Diversified Fund Distribution are preliminary in nature and the payment of such  
 16 will not finally determine the rights of any party with respect to such distributions. Any  
 17 final determination with respect to any Monthly Interim Distribution, Monthly FTDF  
 18 Distribution or Monthly Diversified Fund Distribution and any Offsets, 2% Holdbacks and  
 19 Hilco Holdbacks related thereto, including any factual findings and legal rulings, shall be  
 20 made upon appropriate notice and in such additional proceedings as to be determined by  
 21 the Court.

22 Submitted and approved by:

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24  
 25 By /s/ RC (#006593)

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